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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,423	03/14/2001	Gene E. Nacey	569.005	3458
35195	7590	06/29/2005	EXAMINER .	
FERENCE & ASSOCIATES 409 BROAD STREET PITTSBURGH, PA 15143			PASS, NATALIE	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/808,423	<b>Applicant(s)</b> NACEY, GENE E.	
	<b>Examiner</b> Natalie A. Pass	<b>Art Unit</b> 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2001.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Notice to Applicant***

1. This communication is in response to the application filed 14 March 2001. Claims 1-38 are pending.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolawa et al., U.S. Patent Number 6, 370, 513 in view of Froseth et al., U.S. Patent Application Publication Number 2002/0004749.

(A) As per claim 1, Kolawa teaches a system for facilitating commercial food management, said system comprising:

means for recognizing an authorized user accessing the system remotely (Kolawa; Figure 1, Figure 18, column 17, line 64 to column 18, line 5);

means for providing at least one suggested or recommended menu which meets predetermined criteria (Kolawa; column 2, line 55 to column 3, line 4, column 11, lines 4-7, column 17, lines 57-62); and

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means for providing nutritional information relating to said at least one suggested menu (Kolawa; Figures 26A TO 26D, column 17, lines 23-33).

Kolawa fails to explicitly disclose a system comprising meeting predetermined nutritional criteria.

However, the above features are well-known in the art, as evidenced by Froseth.

In particular, Froseth teaches a system including means for providing at least one suggested or recommended menu which meets predetermined nutritional criteria (Froseth; paragraph [0119] – [0120]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Kolawa to include means for providing at least one suggested or recommended menu which meets predetermined nutritional criteria, as taught by Froseth, with the motivations of catering to health concerns while meeting the diverse health and taste needs of individual consumers (Froseth; paragraphs [0009]-[0010]).

(B) As per claims 2-6, Kolawa and Froseth teach a system as analyzed and discussed in claim 1 above

wherein the at least one suggested menu is based upon the regional location of the authorized user (Kolawa; column 18, lines 5-7),(Froseth; paragraph [0184]);

wherein the at least one suggested menu is based upon a user's (reads on a "patient's") preference (Kolawa; Figure 19, column 2, line 66 to column 3, line 4, column 11, lines 3-7, column 18, lines 54-56);

wherein the at least one suggested menu is based upon food products the authorized user currently has in stock (Kolawa; column 13, lines 31-33);

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wherein said means for providing nutritional information includes a plurality of databases, including a food item database (Kolawa; column 16, lines 63-65), a recipe database (Kolawa; column 16, lines 32-34), and a master diet type database (Kolawa; column 7, lines 15-17); and

additionally comprising means to manage or track food inventory at the location of the authorized user (Kolawa; Figure 11, column 13, lines 29-33).

The motivations for combining the respective teachings of Kolawa and Froseth are as given in the rejection of claim 1 above, and incorporated herein.

(C) As per claims 7-11, Kolawa and Froseth teach a system as analyzed and discussed in claim 1 above

additionally comprising means for an authorized user to order food supplies from within the system (Kolawa; Figure 11, column 13, lines 35-38);

additionally comprising means for a user granted access to the system to interact with a “customer service representative” (reads on “proprietor of the system”) (Kolawa; column 5, lines 6-9);

additionally comprising means for a plurality of users granted access to the system to interact with one another (Froseth; paragraph [0157]);

additionally comprising means for searching information contained within the system, including said nutritional information (Kolawa; column 20, lines 60-63); and

wherein at least one authorized user is associated with a health care facility (Froseth; paragraphs [0085], [0120]).

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The motivations for combining the respective teachings of Kolawa and Froseth are as given in the rejection of claim 1 above, and incorporated herein.

(D) Claim 12 differs from claim 1 in that it is a system for facilitating commercial food management system comprising means for recognizing an authorized user associated with a health care facility rather than a system for facilitating commercial food management comprising means for recognizing an authorized user.

As per claim 12, Kolawa and Froseth teach a system for facilitating commercial food management, said system comprising:

means for recognizing an authorized user associated with a health care facility accessing the system remotely (Kolawa; Figure 1, Figure 18, column 17, line 64 to column 18, line 5), (Froseth; paragraphs [0085], [0120]);

means for providing at least one suggested menu which meets predetermined nutritional criteria (Froseth; paragraph [0119] – [0120]);

means for providing nutritional information relating to said at least one suggested menu (Kolawa; Figures 26A TO 26D, column 17, lines 23-33).

The motivations for combining the respective teachings of Kolawa and Froseth are as given in the rejection of claim 1 above, and incorporated herein.

(E) System claims 13-24 differ from claims 1-12, in that claims 13-24 contain a system recited as a series of elements whereas claims 1-12 contain features recited in a “means plus function” format. As the underlying functions of claims 1-12 have been shown to be obvious in view of the teachings of Kolawa and Froseth in the above rejections of claims 1-12, it

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is readily apparent that the system disclosed by Kolawa and Froseth includes the elements to perform these functions. As such, these limitations are rejected of the same reasons given above for claims 1-12, and incorporated herein.

(F) Claim 25 differs from claim 1 in that it is a method for facilitating commercial food management rather than a system for facilitating commercial food management.

As per claim 25, Kolawa and Froseth teach a method for facilitating commercial food management, said method comprising the steps of:

authorizing at least one remote recipient to receive information (Kolawa; Figure 1, Figure 18, column 17, line 64 to column 18, line 5);

creating at least one suggested menu which meets predetermined nutritional criteria (Froseth; paragraph [0119] – [0120]);

providing for computer-based viewing of the at least one suggested menu (Kolawa; Figure 22, column 5, lines 1-2, column 19, lines 16-17); and

making available to the at least one authorized recipient nutritional information associated with the at least one menu (Kolawa; Figures 26A TO 26D, column 17, lines 23-33).

The motivations for combining the respective teachings of Kolawa and Froseth are as given in the rejection of claim 1 above, and incorporated herein.

(G) Method claims 26-35 recite the underlying process steps of system claims 2-11 respectively. As the elements/features of claims 2-11 have been shown to be either disclosed by or obvious in view of the collective teachings of Kolawa and Froseth, it is readily apparent that the system disclosed by the applied prior art performs the recited underlying functions. As such,

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these limitations recited in claims 26-35 are rejected for the same reasons given above for system claims Kolawa and Froseth, and incorporated herein.

(H) Claim 36 differs from claim 25 in that it is a method for facilitating commercial food management, comprising the step of authorizing at least one remote recipient associated with a health care facility to receive information rather than a method for facilitating commercial food management, comprising the step of authorizing at least one remote recipient to receive information.

As per claim 36, Kolawa and Froseth teach a method for facilitating commercial food management, said method comprising the steps of:

authorizing at least one remote recipient associated with a health care facility to receive information (Kolawa; Figure 1, Figure 18, column 17, line 64 to column 18, line 5), (Froseth; paragraphs [0085], [0120]);

creating at least one suggested menu which meets predetermined nutritional criteria (Froseth; paragraph [0119] – [0120]);

providing for computer-based viewing of the at least one suggested menu (Kolawa; Figure 22, column 5, lines 1-2, column 19, lines 16-17);; and

making available to the at least one authorized recipient nutritional information associated with the at least one menu (Kolawa; Figures 26A TO 26D, column 17, lines 23-33).

The motivations for combining the respective teachings of Kolawa and Froseth are as given in the rejection of claim 1 above, and incorporated herein.



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(I) Claims 37 and 38 differ from method claims 25 and 36 by reciting a “[a] program storage device readable by machine for tangibly embodying a program of instructions executable by said machine...” in the preamble. As per this limitation, the system and method of Kolawa and Froseth is implemented on a computer comprising a program storage device readable by machine for tangibly embodying a program of instructions executable by said machine (Kolawa; column 4, line 63 to column 5, line 9), (Froseth; paragraphs [105]-[107]). The remainder of claims 37-38 repeats the limitations of claim 25, 36 and is therefore rejected for the same reasons given above for claims 25, 36.

The motivations for combining the respective teachings of Kolawa and Froseth are as given in the rejection of claim 1 above, and incorporated herein.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The cited but not applied references, Krulak et al, U.S. Patent Application Publication 2001/0025279, Hoskyns et al., U.S. Patent Application Publication 2002/0046060, Yeager, U.S. Patent Application Publication 2003/0091964, Szabo, U.S. Patent Application Number 5, 954, 640, Short, U.S. Patent Number 6, 356, 940, Koenig, U.S. Patent Application Publication 2002/0015723, and Brown, U.S. Patent Number 6, 458, 080 teach the environment of providing computerized and customized food delivery.

5. Any response to this action should be mailed to:

**Commissioner of Patents and Trademarks**

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**Washington D.C. 20231**

or faxed to: (703) 305-7687.

For informal or draft communications, please label "PROPOSED" or "DRAFT" on the front page of the communication and do NOT sign the communication. After Final communications should be labeled "Box AF."

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie A. Pass whose telephone number is (571) 272-6774. The examiner can normally be reached on Monday through Thursday from 9:00 AM to 6:30 PM. The examiner can also be reached on alternate Fridays.


7. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached at (571) 272-6776. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (571) 272-3600.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Natalie A. Pass

June 19, 2005



JOSEPH THOMAS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600